

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE SB 499

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on April 15, 1999
at 8:36 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Bea McCarthy (D)
Sen. Mack Cole (R)
Rep. Karl Ohs (R)
Rep. Bill Tash (R)
Rep. Bill Eggers (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Larry Mitchell, Legislative Services Division

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Free Conference Committee SB 499
Executive Action: SB 499

Discussion:

CHAIRMAN GROSFIELD remarked instead of talking about an
applicability clause, we need to be talking about a savings
clause.

Larry Mitchell, Legislative Services Division, explained
EXHIBIT(frs82sb0499a01) and **EXHIBIT**(frs82sb0499a02).

EXECUTIVE ACTION ON SB 499

Motion/Vote: SEN. MCCARTHY moved that THE AMENDMENT IN EXHIBIT 1 BE ADOPTED. Motion carried unanimously.

Motion: SEN. CRIPPEN moved that THE AMENDMENT IN EXHIBIT 2 BE ADOPTED.

Discussion:

Mark Simonich, Director, Department of Environmental Quality (DEQ), commented the department opposes this amendment. They do not believe it is necessary and causes additional difficulties with EPA's decision on water quality standards in Montana. He recognizes many think EPA won't do anything about this, but a suit was brought forth and EPA enforced this action. He doesn't think we can expect that EPA will act as they have in the past and do nothing. If we bring legislation out of this session which does not allow DEQ to fully put their programs into place in a way that they can convince EPA they are satisfactory with federal requirements, we can be guaranteed that EPA will respond. He does not believe this is in the best interest of the people of Montana.

REP. EGGERS remarked **Mr. Simonich** gave a general statement to the objection. He asked him to be more specific as to what language this included or excluded from this clause which attention should be given to in order to comply with the standard of acceptability.

Mr. Simonich explained this savings clause deals with a number of types of discharges. They haven't been able to qualify these and EPA is concerned with the number and types of discharges which may be grandfathered into the savings clause. The EPA specifically was not going to approve Montana's exemption of discharges from non-degradation review. The language which was drafted in **EXHIBIT 2** was very narrowly drafted to deal with short-term construction activities. The fact these activities could have already taken place or have been authorized and will take place is a moot point. If EPA challenges this, it will be done before anything can take place on it.

REP. EGGERS stated, in other words, the language is too expansive in regard to the exception, in dating back to the passage of the statute.

Mr. Simonich believes that is accurate.

REP. EGGERS asked how this could be changed to conform to what is acceptable.

Mr. Simonich responded their idea of something which is acceptable is embodied in **EXHIBIT 1**.

John Bloomquist, Montana Stockgrowers Association, commented from the discussion on April 14, a savings clause is entirely appropriate for those activities which commenced under the law at the time of activity. He is not sure EPA will respond to savings clause issues by the legislature. If we are going to worry about every time somebody is going to sue or complain, we might as well hang it up. People can challenge any aspect and try to put the pressure on EPA to disapprove this. Those activities should be able to continue as long as they are not increased and that is specifically what **EXHIBIT 1** does.

CHAIRMAN GROSFIELD remarked this is an issue which impacts the State's relationship with the EPA. It is important to have a record of it. This bill began with the letter of December 24, 1998 and the follow-up letter in January. The EPA had some limited comments on our water quality laws and rules which we have had over the last several years. Some comments extended back to the 1970's. The purpose of this bill is to respond to that.

While the EPA, under the Federal Clean Water Act, obviously has authority which supersedes Montana authority, nevertheless, we have a Montana legislature which deals with policy areas and especially in the area of savings clause issues.

CHAIRMAN GROSFIELD is concerned we might end up going naked with respect to some of these past activities, which people did in good faith and even present activities such as flow-through stock tanks, foundation drains and some of those kinds of things. He can't imagine the EPA wants to go through some kind of a big process on every one of those. He doesn't want to put Montana citizens in that kind of position. It seems to him we are going back to activities conducted in good faith and reliance on the law, and it is the responsibility of the legislature to provide some protection to the citizens of this State.

REP. TASH mentioned in Denver when they met with Region 8 people and also noted in their letter, **CHAIRMAN GROSFIELD, Director Simonich** and he heard the region lost faith for developing non-degradation and implementation procedures in the absence of detailed EPA requirements, or national implementation guidance at a time the majority of the State lacked this type of implementation. This is exactly why they attended that meeting

and were applauded for the efforts in regards to compliance with the Federal Clean Water Act. He feels Montana has a good track record.

SEN. MCCARTHY alleged she fully understands the implications of this amendment. She lives in the area of the State which is being cleaned up as the Super Fund. She also understands the control which EPA has made on our water. She feels we need to make this statement and for that reason, she made the motion for this amendment.

REP. EGGERS thought there appears to be some question regarding the acceptability of this amendment by the EPA. Unfortunately, we haven't gotten an advisory opinion from them on it, pro or con. This leaves us in a position of possible vulnerability which raises the question of what the possible consequences may be if this is passed and the EPA doesn't like it. He read this amendment as being a grandfather clause and feels he needs to be directed by **Mr. Simonich** to be compliant with what the EPA wants. He believes **Mr. Simonich** is better advised on the subject than he is.

SEN. COLE expressed as an old federal employee, he feels this is something which is policy and something he can support.

Vote: Motion that **THE AMENDMENT BE ADOPTED (EXHIBIT 2)** carried 5-1 with **REP. EGGERS** VOTING NO.

Motion/Vote: **SEN. MCCARTHY** moved that **SB 499 DO PASS AS AMENDED.** Motion carried unanimously.

Larry Mitchell, Legislative Services Division, submitted the final version of amendments. **EXHIBIT(frs82sb0499a03)**

ADJOURNMENT

Adjournment: 8:53 A.M.

SEN. LORENTS GROSFIELD, Chairman

Gilda Clancy, Secretary

LG/GC

EXHIBIT (frs82sb0499aad)